



on implementing special education in charter schools.

SPECIAL REPORT

INCLUDING CHARTER SCHOOL STUDENTS WITH DISABILITIES IN STATE ASSESSMENTS

By

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INTRODUCTION

Even though charter schools may be exempted from some state or local laws or regulations, they must abide by all federal laws and regulations. The federal statutes and related regulations that contain specific requirements on the assessment of students with disabilities are the Individuals with Disabilities Education Act (IDEA) and the Elementary and Secondary Education Act now known the as No Child Left Behind Act (NCLB). Since almost all charter schools have some students with disabilities who have individualized education programs (IEPs),¹ charter teachers and administrators need to be informed about the inclusion of those students in assessments.

The first section of this article provides an overview of the major assessment requirements of both IDEA and NCLB. Excerpts from the laws and regulations that are most relevant to the issues discussed in this report are quoted in Appendices A and B. It is important for the reader to understand that this report does not address assessment that is part of an evaluation to determine eligibility for special education services. Rather, it is focused on assessment that is part of mandated state and district academic accountability systems. After a summary of the basic statutory and regulatory requirements, this report focuses on general and alternate types of assessments and their use for certain students with disabilities.

LEGISLATIVE AND REGULATORY OVERVIEW

The Legal Context for Charter Schools

Public education in the United States is mainly controlled at the state level, although the federal government's role has expanded significantly since the middle of the 1900s. Charter schools were added to the public education system with the passage of the first charter school law in Minnesota in 1991. As of 2008, charter school laws have been adopted in 40 states and the District of Columbia and 1.2 million children attend the over 4,000 charter schools now in operation.

Each state's charter law differs from all others and the most critical element for charter schools to understand is their legal status within the public school

¹ An IEP is defined in federal law as a written statement for a child with a disability prescribing the programs and services to be provided that is developed, reviewed, and revised in accordance with §§300.320 through 300.324 of the IDEA regulations. As discussed subsequently, an IEP must address the student's participation in assessments.

system of their state. Typically, a state education system consists of a state education agency (SEA) that controls education and creates local education agencies (LEAs or school districts) to deliver instruction and carry out the state's educational policy. Some states also have intermediate districts to provide services for the LEAs. Each LEA, in turn, is composed of one or more schools.

A charter school may be considered under state law to be an LEA or part of an LEA. This legal identity determines the level of responsibility the charter school has for special education. The distinctions and consequences of each type of legal identity are as follows:

- A charter school that is its own LEA has all the same responsibilities as any other LEA in that state and has no mandated connection (no link) to any other LEA. This typically includes full fiscal and programmatic responsibility for meeting the needs specified in the IEP of each student with a disability enrolled in the charter school unless the state law has provided for any special circumstances.²
- A charter school that is part of an LEA has the lower level of responsibility that is typically assigned to schools within a district. The charter school's connection to its LEA may be a total link—all special education services and programs are provided by the LEA—or a partial link under which some areas of responsibility are assigned to the LEA and some to the charter school. In a partial link situation, the LEA and the charter schools must negotiate the responsibility for provision of special education and related services. For example, the LEA may provide all evaluation and IEP services while the charter school becomes responsible for carrying out the program prescribed by the IEP team. The relationship between a charter school and the LEA of which it is a part varies greatly from state to state and within states and is usually addressed in the charter itself or in a written contract between the parties.

Sometimes a charter school has a different identity for special education than it has for all other aspects of school operations. Since the responsibilities related to assessing students with disabilities differ for LEAs and schools of an LEA, it is critical that each charter school understand its legal identity and its level of responsibility for the many tasks related to student academic achievement and specifically the implications for assessing children with disabilities. The remainder of this section summarizes the

² An example of a special circumstance is contained in the charter requirements in Massachusetts and New Jersey where charter schools are LEAs, but responsible only for in-school special education programs and services. The LEA where the student's parents reside becomes responsible if a private day or residential placement is prescribed for the student with a disability.

provisions of federal law that govern student assessment with a focus on their application to students with disabilities.

IDEA Assessment Requirements

Prior to 1997, it was not unusual for students with disabilities to be excluded from state and district academic assessments with no consideration of their ability to participate. The 1997 reauthorization of IDEA added a new requirement—that children with disabilities be included in all state and district-wide assessments. The IEP for each child with a disability had to describe accommodations a child would need, if any, to participate in state and district academic assessments and, if a particular assessment was not appropriate for the child, why that was so and how that child would be assessed. Accommodations were to be provided if needed and states were also required to develop and implement by July 1, 2000 alternate assessments for those children who could not participate in state and district assessments even with the use of accommodations.

In the 1997 revision of IDEA, states were also required for the first time to set performance goals and indicators for students with disabilities that were consistent, to the maximum extent appropriate, with the goals and standards for children without disabilities that the state may have set. States were required to assess progress toward achieving those goals that, at a minimum, had to address the performance of children with disabilities on assessments, drop-out rates, and graduation rates.

The 2004 revision to IDEA specifically recognized the inclusion of all children with disabilities in the assessments that had been mandated by NCLB two years before. It also continued the requirements related to accommodations and alternate assessments from the 1997 revision. The regulations finalized in 2006 provide that the student's IEP must include information about accommodations the child needs and, if the child must take an alternate assessment, the reasons why the child cannot participate in the regular assessment and why the particular alternate assessment is appropriate for that child.

NCLB Requirements³

The standards movement in American education is said to have begun after the *National At Risk Report* issued in 1983 described failures apparent in public schools at the time. Throughout the 1990's, many states adopted standards for their students and schools to try to improve academic

³ The U. S. Department of Education has issued many policy and non-regulatory guidance documents that provide information on all aspects of the NCLB requirements. See <http://www.ed.gov/policy/landing.jhtml?src=rt>

outcomes. The No Child Left Behind Act (NCLB) adopted in 2002 reauthorized and revised the Elementary and Secondary Education Act (ESEA) adding extensive provisions on standards and assessments that significantly changed the way students with disabilities participated in state and district assessments.

Standards

Under NCLB, every state⁴ is required to develop two types of standards: challenging academic content standards and student achievement standards that apply to all public school students in the state and cover, at a minimum, reading/language arts, mathematics and science. It is imperative that all school personnel understand the distinction between these different standards and the way these terms are used in relation to the required assessments.

First, under NCLB there are two main types of standards:

1. *academic content standards*—specifications of what all students are expected to know and be able to do at each grade level. All types of assessment for NCLB must be aligned to the state's grade-level academic content standards including alternate assessments.
2. *academic achievement standards*—specifications of how well students have to do on a test based on the content standards, i.e., the degree of proficiency students demonstrate about what they know and are able to do in each of the content areas. Achievement standards must cover each grade and subject assessed, and include at least three levels of achievement (e.g., basic, proficient and advanced) with "cut scores" that differentiate among the levels.

Then, there are three subtypes of academic achievement standards:

- a) *grade level* achievement standards;
- b) *alternate* achievement standards for students with the most significant cognitive disabilities (performance criteria for a small percent of students with the most significant cognitive disabilities who take an alternate assessment); and
- c) *modified* achievement standards that may be less difficult than the grade-level achievement standards. They are intended for an additional group of students who are able to make progress toward grade-level achievement standards, but may not reach them in the same timeframe as other students and are designated to take a modified assessment.

⁴ The requirements of NCLB are mandated for every state that receives funding under that law. Currently, all states receive Title I funds and other types of funding that are authorized under this law, so all the requirements of the law apply to all states.

Each state had to submit an accountability plan to the U. S. Secretary of Education that would ensure that all students would become proficient by the 2013-14 school year. The plan had to describe the state's decision about the adequate yearly progress (AYP) that schools, districts and the state as a whole had to meet to achieve that goal. Specific consequences (e.g., transfer to another school, student tutoring, etc.) are outlined in the law as remedies available for students in districts that fail to meet AYP levels. The law also requires extensive public reporting.

Assessment Systems

NCLB requires each state to set up a state assessment system based on the state's standards and to measure annually the progress of schools, LEAs and the state as a whole. The law also requires each state to define adequate yearly progress (AYP) and provides consequences for lack of progress toward the state's goals. As to assessment for students with disabilities, NCLB incorporated and expanded on the assessment requirements of the 1997 IDEA for students with disabilities. NCLB requires that all students be included in assessments to measure their progress on state standards. Those assessments must be performed yearly, be valid and reliable, be aligned with the content and achievement standards and the results must be disaggregated within each state, LEA and school by the following subgroups:

- a) gender;
- b) each major racial and ethnic group;
- c) English proficiency status;
- d) migrant status;
- e) students with disabilities (under IDEA) as compared to all other students; and
- f) economically disadvantaged students compared to those not economically disadvantaged.

Assessments must provide appropriate accommodations needed by students with disabilities who are eligible under IDEA and Section 504⁵ and alternate assessments must also be provided. The NCLB law requires that states establish and monitor clear guidelines for IEP teams to use in determining which students will use accommodations or take an alternate assessment. States have to ensure that parents of those students, who are part of the IEP team, understand the specific decision made for their child. In addition, students in the modified assessment group must have access to the general education curriculum for the grade in which they are enrolled and they must

⁵ Section 504 is a civil rights law passed in 1973 law that prohibits discrimination against individuals with disabilities. It provides that a child with a disability have equal access to an education through appropriate accommodations and modifications. There are no funds attached to Section 504..

not be precluded from attempting to complete the requirements for a regular high school diploma.

For public reporting, states may set a minimum number of students that would yield statistically reliable information for each purpose for which disaggregated data are used and states may also set a minimum number below which they would not report achievement if the results would reveal personally identifiable information about an individual student. However, LEAs must report all results to the state and the state must include students in all disaggregated subgroups in state-level reports even if the number of students in a subgroup is not statistically reliable at the school or LEA level. In addition, states must participate in the biennial state academic assessments of fourth and eighth grade reading and math under the State National Assessment of Educational Progress (NAEP).

The remainder of this article is devoted to a description of the types of assessments available under the law for students with disabilities and the conditions for their use.

ASSESSING STUDENTS WITH DISABILITIES

As noted previously, revisions to IDEA adopted in 1997 required for the first time that all children with disabilities be included in all general state and districtwide assessment programs and that all states develop alternate assessments for students with disabilities who could not participate in the regular assessment even with accommodations. These requirements were continued and expanded in the 2004 revisions to the law and the 2006 regulations (see Appendix A).

It is important for charter school staff to understand that the specifics of implementing the federal regulations about assessment and accountability is different in each state. For example, each state sets its own grade-level content standards, develops (or contracts with a test company to develop) its own assessments and then sets state achievement standards and the practices to be followed for assessment.

The following summary of current law and policy related to assessing students with disabilities is intended to provide an introduction especially for those working in and with charter schools. The reference list provides additional resources for more detail on each of the points covered.

The Basic Requirement

NCLB requires that all students, including students with disabilities, in grades three through eight and one grade in high school be assessed annually in the core academic subjects as part of the state's accountability program. Results for all students who have been enrolled in a school for a full academic year are used in determining and reporting the school's performance in terms of the state requirements for meeting annual measurable goals for adequate yearly progress (AYP). The IDEA requires that the way a student with a disability participates in assessment is determined by the team that reviews the child's IEP every year. The IEP must include details about that appropriate assessment for the child and any accommodations that will be provided.

Accommodations⁶

As defined on the website of the National Center on Educational Outcomes (NCEO),⁷ accommodations are changes in testing materials or procedures that enable students to participate in assessments in a way that allows abilities to be assessed rather than disabilities. They are provided to "level the playing field." Any student with disabilities is entitled to use accommodations as written in their IEP. Without accommodations, the assessment may not accurately measure the student's knowledge and skills.

Accommodations are generally grouped into the following categories:

- Presentation (e.g., repeat directions, read aloud, large print, Braille, etc.)
- Equipment and material (e.g., calculator, amplification equipment, manipulatives, etc.)
- Response (e.g., mark answers in book, scribe records response, point, etc.)
- Setting (e.g., study carrel, student's home, separate room, etc.)
- Timing/Scheduling (e.g., extended time, frequent breaks, etc.)

Standards for Assessment

Every state has developed a set of tests to meet the federal law. All tests used under NCLB must be aligned with the state's academic content standards. The only variation allowed among the special tests for students with disabilities is in the achievement standards. As noted above, achievement standards are measures of how well the student performs on

⁶ Some states have extend availability of accommodations to all students, not just those with disabilities. See lists of state accommodations at <http://cehd.umn.edu/NCEO/TopicAreas/Accommodations/StatesAccomm.htm>

⁷ See <http://cehd.umn.edu/NCEO/TopicAreas/Accommodations/Accomtopic.htm>

the tests. They attach a 'level' to the student's performance most often using the three categories of basic, proficient or advanced. States may use other terms for their performance levels and may include more than three levels.

Participation in Assessments by Students with Disabilities

Students with disabilities may participate in assessments using any one of five options:

- 1) Take a general grade-level assessment in the same way as all general education students;
- 2) Take a general grade-level assessment with accommodations;
- 3) Take an alternate assessment based on grade-level academic achievement standards;
- 4) Take an alternate assessment based on modified academic achievement standards⁸ (often referred to as the 2% test or abbreviated as AA-MAS). This assessment is to be provided for a small group of students whose disability has precluded them from achieving grade-level proficiency and whose progress is such that they will not reach grade-level proficiency in the same time frame as other students. The modified assessment must cover the same grade-level content as the general assessment. In addition, states must ensure that students assessed with the AA-MAS have access to grade-level content so that they can work toward grade-level achievement. For example, their individualized education programs (IEPs) must include goals that are based on grade-level content standards;⁹ or
- 5) Take an alternate assessment based on alternate academic achievement standards (often referred to as the 1% test or abbreviated as AA-AAS). This assessment is designed only for those students with the most significant cognitive disabilities.

The terms "1%" and "2%" in this context refer to the provision in NCLB regulations that permit a state to include up to that percent of students' proficient and advanced scores in measuring AYP at the state and district levels. Each state is required to develop criteria to be used by IEP teams in deciding about how each students with a disability will participate in each type of assessment. The percentages were chosen on the basis of national statistics related to the incidence of disabilities.

⁸ A copy of final regulations for the alternate assessments is available at <http://www.ed.gov/admins/lead/account/saa.html#regulations>

⁹ For documents that describe the process for creating a standards-based IEP and the use of this type of IEP by states, see <http://www.projectforum.org/index.cfm>

Alternate Assessment Approaches

The type and format used for the AA-AAS usually differ from all other types of tests. The main approaches used for assessing these students with the most significant cognitive disabilities are:

- Portfolios - a systematic collection of student work that is evaluated and measured against predetermined scoring criteria;
- Performance assessment - usually an individually administered test that may be a paper and pencil test or a non-written measure of the child's achievement; and
- Checklist – a record of how well students are able to carry out certain activities.

Other types of alternate assessments closely resemble the general assessment which is most often a multiple choice test. For more detailed descriptions, see the alternate assessment section of the NCEO website (<http://cehd.umn.edu/nceo/TopicAreas/AlternateAssessments/altAssessFAQ.htm>)

CONCLUSIONS

This document is intended to be an overview of the important basic requirements for including students with disabilities in annual state accountability assessments. It is critical that charter school staff understand this complex issue and ensure that their enrolled students with disabilities are appropriately included in the state's accountability assessment system. This entails not only arrangements for assessing those students, but also training general and special education staff in the options available and how to make decisions about the nature of assessment participation for all students with disabilities. The resources cited in the list below provide more extensive details on the topic to further explain the topics addressed in this document.

RESOURCES

National Center on Educational Outcomes (NCEO) - www.nceo.info

National Center for Learning Disabilities (NCLD) – Parent Advocacy Briefs:
<http://www.nclld.org/content/view/290/>

National Dissemination Center for Children with Disabilities – Assessment and Accommodations:
<http://research.nichcy.org/accommodations1.asp>

U. S. Department of Education website:

- *Standards, Assessment and Accountability* -
<http://www.ed.gov/admins/lead/account/saa.html>
- The Office of Special Education Programs (OSEP) -*Toolkit on Teaching and Assessing Students with Disabilities*:
<http://www.osepideasthatwork.org/toolkit/index.asp>
- *Toolkit on Teaching and Assessing Students with Disabilities - Special Topic Area on Alternate Assessments for Students with Disabilities*:
<http://www.osepideasthatwork.org/ParentKit/AltAssessFAQ.asp>
- *Modified academic achievement standards: Non-regulatory guidance* (2007): <http://www.ed.gov/policy/speced/guid/nclb/twopercent.doc>

United States Government Accountability Office (2005). *Most Students with Disabilities Participated in Statewide Assessments, but Inclusion Options Could Be Improved*
<http://www.gao.gov/new.items/d05618.pdf>

APPENDIX A
Assessment Provisions in the IDEA 2004 Law

SEC. 612. STATE ELIGIBILITY.

(a) IN GENERAL.--A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

(16) PARTICIPATION IN ASSESSMENTS.—

(A) IN GENERAL.--All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

(B) ACCOMMODATION GUIDELINES.--The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

(C) ALTERNATE ASSESSMENTS.--

(i) IN GENERAL.--The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.

(ii) REQUIREMENTS FOR ALTERNATE ASSESSMENTS.--The guidelines under clause (i) shall provide for alternate assessments that—

(I) are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and

(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

(iii) CONDUCT OF ALTERNATE ASSESSMENTS.--The State conducts the alternate assessments described in this subparagraph.

Assessment Provisions in the IDEA 2006 Regulations

§300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—

(2) (B)(ii) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives

(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and

(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--

(A) The child cannot participate in the regular assessment; and

(B) The particular alternate assessment selected is appropriate for the child.

APPENDIX B

Selected Assessment Provisions of the NCLB Regulations

200.1 State responsibilities for developing challenging academic standards.

(a) *Academic standards in general.* A State must develop challenging academic content and student academic achievement standards that will be used by the State, its local educational agencies (LEAs), and its schools to carry out subpart A of this part. These academic standards must—

- (1) Be the same academic content and academic achievement standards that the State applies to all public schools and public school students in the State, including the public schools and public school students served under subpart A of this part, except as provided in paragraphs (d) and (e) of this section, which apply only to the State's academic achievement standards;
- (2) Include the same knowledge and skills expected of all students and the same levels of achievement expected of all students, except as provided in paragraphs (d) and (e) of this section; and
- (3) Include at least mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science, and may include other subjects determined by the State.

(b) *Academic content standards.*

- (1) The challenging academic content standards required under paragraph (a) of this section must—
 - (i) Specify what all students are expected to know and be able to do;
 - (ii) Contain coherent and rigorous content; and
 - (iii) Encourage the teaching of advanced skills.
- (2) A State's academic content standards may—
 - (i) Be grade specific; or,
 - (ii) Cover more than one grade if grade-level content expectations are provided for each of grades 3 through 8. (3) At the high school level, the academic content standards must define the knowledge and skills that all high school students are expected to know and be able to do in at least reading/ language arts, mathematics, and, beginning in the 2005–06 school year, science, irrespective of course titles or years completed.

(c) *Academic achievement standards.*

- (1) The challenging student academic achievement standards required under paragraph (a) of this section must—
 - (i) Be aligned with the State's academic content standards; and
 - (ii) Include the following components for each content area:
 - (A) Achievement levels that describe at least—
 - (1) Two levels of high achievement— proficient and advanced—that determine how well students are mastering the material in the State's academic content standards; and
 - (2) A third level of achievement— basic—to provide complete information about the progress of lower-achieving students toward mastering the proficient and advanced levels of achievement.
 - (B) Descriptions of the competencies associated with each achievement level.
 - (C) Assessment scores ("cut scores") that differentiate among the achievement levels as specified in paragraph (c)(1)(ii)(A) of this section, and a description of the rationale and procedures used to determine each achievement level.
 - (2) A State must develop academic achievement standards for every grade and subject assessed, even if the State's academic content standards cover more than one grade.
 - (3) With respect to academic achievement standards in science, a State must develop—
 - (i) Achievement levels and descriptions no later than the 2005–06 school year; and
 - (ii) Assessment scores ("cut scores") after the State has developed its science assessments but no later than the 2007–08 school year.
- (d) *Alternate academic achievement standards.* For students under section 602(3) of the Individuals with Disabilities Education Act with the most significant cognitive disabilities who take an alternate assessment, a State may, through a documented and validated standards-setting process, define alternate academic achievement standards, provided those standards—
 - (1) Are aligned with the State's academic content standards;

- (2) Promote access to the general curriculum; and
 - (3) Reflect professional judgment of the highest achievement standards possible.
- (e) *Modified academic achievement standards.*
- (1) For students with disabilities under section 602(3) of the Individuals with Disabilities Education Act (IDEA) who meet the State's criteria under paragraph (e)(2) of this section, a State may define modified academic achievement standards, provided those standards—
 - (i) Are aligned with the State's academic content standards for the grade in which the student is enrolled;
 - (ii) Are challenging for eligible students, but may be less difficult than the grade-level academic achievement standards under paragraph (c) of this section;
 - (iii) Include at least three achievement levels; and
 - (iv) Are developed through a documented and validated standards-setting process that includes broad stakeholder input, including persons knowledgeable about the State's academic content standards and experienced in standards setting and special educators who are most knowledgeable about students with disabilities.
 - (2) In the guidelines that a State establishes under paragraph (f)(1) of this section, the State must include criteria for IEP teams to use in determining which students with disabilities are eligible to be assessed based on modified academic achievement standards. Those criteria must include, but are not limited to, each of the following:
 - (i) The student's disability has precluded the student from achieving grade-level proficiency, as demonstrated by such objective evidence as the student's performance on—
 - (A) The State's assessments described in § 200.2; or
 - (B) Other assessments that can validly document academic achievement.
 - (ii)(A) The student's progress to date in response to appropriate instruction, including special education and related services designed to address the student's individual needs, is such that, even if significant growth occurs, the IEP team is reasonably certain that the student will not achieve grade level proficiency within the year covered by the student's IEP.
 - (B) The determination of the student's progress must be based on multiple measurements, over a period of time, that are valid for the subjects being assessed.
 - (iii) If the student's IEP includes goals for a subject assessed under § 200.2, those goals must be based on the academic content standards for the grade in which the student is enrolled, consistent with paragraph (f)(2) of this section.
- (f) *State guidelines.* If a State defines alternate or modified academic achievement standards under paragraph (d) or (e) of this section, the State must do the following—
- (1) For students who are assessed based on either alternate or modified academic achievement standards, the State must—
 - (i) Establish and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining—
 - (A) Students with the most significant cognitive disabilities who will be assessed based on alternate academic achievement standards; and
 - (B) Students with disabilities who meet the criteria in paragraph (e)(2) of this section who will be assessed based on modified academic achievement standards. These students may be assessed based on modified academic achievement standards in one or more subjects for which assessments are administered under § 200.2;
 - (ii) Inform IEP teams that students eligible to be assessed based on alternate or modified academic achievement standards may be from any of the disability categories listed in the IDEA;
 - (iii) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified or alternate academic achievement standards, including any effects of State and local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma); and
 - (iv) Ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards under the State's guidelines in this paragraph are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

(2) For students who are assessed based on modified academic achievement standards, the State must—

(i) Inform IEP teams that a student may be assessed based on modified academic achievement standards in one or more subjects for which assessments are administered under § 200.2;

(ii) Establish and monitor implementation of clear and appropriate guidelines for IEP teams to apply in developing and implementing IEPs for students who are assessed based on modified academic achievement standards. These students' IEPs must—

(A) Include IEP goals that are based on the academic content standards for the grade in which a student is enrolled; and

(B) Be designed to monitor a student's progress in achieving the student's standards-based goals;

(iii) Ensure that students who are assessed based on modified academic achievement standards have access to the curriculum, including instruction, for the grade in which the students are enrolled;

(iv) Ensure that students who take alternate assessments based on modified academic achievement standards are not precluded from attempting to complete the requirements, as defined by the State, for a regular high school diploma; and

(v) Ensure that each IEP team reviews annually for each subject, according to the criteria in paragraph (e)(2) of this section, its decision to assess a student based on modified academic achievement standards to ensure that those standards remain appropriate.

(g) *Subjects without standards.* If an LEA serves students under subpart A of this part in subjects for which a State has not developed academic standards, the State must describe in its State plan a strategy for ensuring that those students are taught the same knowledge and skills and held to the same expectations in those subjects as are all other students.

(h) *Other subjects with standards.* If a State has developed standards in other subjects for all students, the State must apply those standards to students participating under subpart A of this part.

(Authority: 20 U.S.C. 6311(b)(1))

(Approved by the Office of Management and Budget under control number 1810–0576) [67 FR 45039, July 5, 2002, as amended at 68 FR 68702, Dec. 9, 2003; 72 FR 17778, Apr. 9, 2007]

§ 200.2 State responsibilities for assessment.

(a) (1) Each State, in consultation with its LEAs, must implement a system of high-quality, yearly student academic assessments that includes, at a minimum, academic assessments in mathematics, reading/language arts and, beginning in the 2007–08 school year, science.

(2) (i) The State may also measure the achievement of students in other academic subjects in which the State has adopted challenging academic content and student academic achievement standards.

(ii) If a State has developed assessments in other subjects for all students, the State must include students participating under subpart A of this part in those assessments.

(b) The assessment system required under this section must meet the following requirements:

(1) Be the same assessment system used to measure the achievement of all students in accordance with § 200.3 or § 200.4.

(2) Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency.

(3) (i) Be aligned with the State's challenging academic content and student academic achievement standards; and

(ii) Provide coherent information about student attainment of those standards.

(4) (i) Be valid and reliable for the purposes for which the assessment system is used; and

(ii) Be consistent with relevant, nationally recognized professional and technical standards.

(5) Be supported by evidence (which the Secretary will provide, upon request, consistent with applicable federal laws governing the disclosure of information) from test publishers or other relevant sources that the assessment system is—

(i) Of adequate technical quality for each purpose required under the Act; and

(ii) Consistent with the requirements of this section.

(6) Be administered in accordance with the timeline in § 200.5.

(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher order thinking skills and understanding of challenging content.

(8) Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal or family beliefs and attitudes, except that this provision does not preclude the use of items—

- (i) Such as constructed-response, short answer, or essay questions; or
- (ii) That require a student to analyze a passage of text or to express opinions.

(9) Provide for participation in the assessment system of all students in the grades being assessed consistent with § 200.6.

(10) Except as provided in § 200.7, enable results to be disaggregated within each State, LEA, and school by—

- (i) Gender;
- (ii) Each major racial and ethnic group;
- (iii) English proficiency status;
- (iv) Migrant status as defined in Title I, part C of the Elementary and Secondary Education Act (hereinafter “the Act”);
- (v) Students with disabilities as defined under section 602(3) of the Individuals with Disabilities Education Act (IDEA) as compared to all other students; and
- (vi) Economically disadvantaged students as compared to students who are not economically disadvantaged.

(11) Produce individual student reports consistent with § 200.8(a).

(12) Enable itemized score analyses to be produced and reported to LEAs and schools consistent with § 200.8(b).

(c) The State assessment system may include academic assessments that do not meet the requirements in paragraph (b) of this section as additional measures. Those additional assessments—

- (1) May not reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring under section 1116 of Title I of the Act, if those assessments were not used; but
- (2) May identify additional schools for school improvement, corrective action, or restructuring.

(Authority: 20 U.S.C. 6311(b)(3))

[67 FR 45040, July 5, 2002]

§ 200.6 Inclusion of all students.

A State's academic assessment system required under § 200.2 must provide for the participation of all students in the grades assessed in accordance with this section.

(a) *Students eligible under IDEA and Section 504—*

(1) *Appropriate accommodations.*

(i) A State's academic assessment system must provide—

(A) For each student with a disability, as defined under section 602(3) of the IDEA, appropriate accommodations that the student's IEP team determines are necessary to measure the academic achievement of the student relative to the State's academic content and academic achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c); and

(B) For each student covered under section 504 of the Rehabilitation Act of 1973, as amended (Section 504), appropriate accommodations that the student's placement team determines are necessary to measure the academic achievement of the student relative to the State's academic content and academic achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c).

(ii) A State must—

(A) Develop, disseminate information on, and promote the use of appropriate accommodations to increase the number of students with disabilities who are tested against academic achievement standards for the grade in which a student is enrolled; and

(B) Ensure that regular and special education teachers and other appropriate staff know how to administer assessments, including making appropriate use of accommodations, for students with disabilities and students covered under Section 504.

(2) *Alternate assessments.*

- (i) The State's academic assessment system must provide for one or more alternate assessments for a child with a disability as defined under section 602(3) of the Individuals with Disabilities Education Act (IDEA) whom the child's IEP team determines cannot participate in all or part of the State assessments under paragraph (a)(1) of this section, even with appropriate accommodations.
 - (ii) (A) Alternate assessments must yield results for the grade in which the student is enrolled in at least reading/ language arts, mathematics, and, beginning in the 2007–2008 school year, science, except as provided in the following paragraph.
(B) For students with the most significant cognitive disabilities, alternate assessments may yield results that measure the achievement of those students relative to the alternate academic achievement standards the State has defined under § 200.1(d).
 - (iii) If a State permits the use of alternate assessments that yield results based on alternate academic achievement standards, the State must document that students with the most significant cognitive disabilities are, to the extent possible, included in the general curriculum.
- (3) *Alternate assessments that are based on modified academic achievement standards.*
- (i) To assess students with disabilities based on modified academic achievement standards, a State may develop a new alternate assessment or adapt an assessment based on grade level academic achievement standards.
 - (ii) An alternate assessment under paragraph (a)(3)(i) of this section must—
 - (A) Be aligned with the State's grade level academic content standards;
 - (B) Yield results that measure the achievement of those students separately in reading/language arts and mathematics relative to the modified academic achievement standards;
 - (C) Meet the requirements in §§ 200.2 and 200.3, including the requirements relating to validity, reliability, and high technical quality; and
 - (D) Fit coherently in the State's overall assessment system under § 200.2.
- (4) *Reporting.* A State must report separately to the Secretary, under section 1111(h)(4) of the Act, the number and percentage of students with disabilities taking—
- (i) Regular assessments described in § 200.2;
 - (ii) Regular assessments with accommodations;
 - (iii) Alternate assessments based on the grade-level academic achievement standards described in § 200.1(c);
 - (iv) Alternate assessments based on the modified academic achievement standards described in § 200.1(e); and
 - (v) Alternate assessments based on the alternate academic achievement standards described in § 200.1(d).

(b) *Limited English proficient students.*

§ 200.7 Disaggregation of data.

(a) *Statistically reliable information.*

- (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act or to identify schools in need of improvement, corrective action, or restructuring under section 1116 of the Act if the number of students in those subgroups is insufficient to yield statistically reliable information.
- (2) (i) Based on sound statistical methodology, a State must determine and justify in its State plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.
(ii) Beginning with AYP decisions that are based on the assessments administered in the 2007–08 school year, a State may not establish a different minimum number of students under paragraph (a)(2)(i) of this section for separate subgroups under § 200.13(b)(7)(ii) or for the school as a whole.

(b) *Personally identifiable information.*

- (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act if the results would reveal personally identifiable information about an individual student.
- (2) To determine whether disaggregated results would reveal personally identifiable information about an individual student, a State must apply the requirements under section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974).
- (3) Nothing in paragraph (b)(1) or (b)(2) of this section shall be construed to abrogate the responsibility of States to implement the requirements of section 1116(a) of the Act for determining whether States, LEAs, and schools are making adequate yearly progress on the basis of the performance of each subgroup under section 1111(b)(2)(C)(v) of the Act.
- (4) Each State shall include in its State plan, and each State and LEA shall implement, appropriate strategies to protect the privacy of individual students in reporting achievement results under section 1111(h) of the Act and in determining whether schools and LEAs are making adequate yearly progress on the basis of disaggregated subgroups.
- (c) *Inclusion of subgroups in assessments* If a subgroup under § 200.2(b)(10) is not of sufficient size to produce statistically reliable results, the State must still include students in that subgroup in its State assessments under § 200.2.
- (d) *Disaggregation at the LEA and State.* If the number of students in a subgroup is not statistically reliable at the school level, the State must include those students in disaggregations at each level for which the number of students is statistically reliable—e.g., the LEA or State level. (Approved by the Office of Management and Budget under control number 1810–0576) (Authority: 20 U.S.C. 6311(b)(3); 1232g) [67 FR 45042, July 5, 2002, as amended at 67 FR 71715, Dec. 2, 2002; 72 FR 17779, Apr. 9, 2007]

§ 200.8 Assessment reports.

(a) *Student reports.* A State's academic assessment system must produce individual student interpretive, descriptive, and diagnostic reports that—

- (1) (i) Include information regarding achievement on the academic assessments under § 200.2 measured against the State's student academic achievement standards; and
- (ii) Help parents, teachers, and principals to understand and address the specific academic needs of students; and
- (2) Are provided to parents, teachers, and principals—
 - (i) As soon as is practicable after the assessment is given;
 - (ii) In an understandable and uniform format, including an alternative format (e.g., Braille or large print) upon request; and
 - (iii) To the extent practicable, in a language that parents can understand.

(b) *Itemized score analyses for LEAs and schools.*

- (1) A State's academic assessment system must produce and report to LEAs and schools itemized score analyses, consistent with § 200.2(b)(4), so that parents, teachers, principals, and administrators can interpret and address the specific academic needs of students.

(2) The requirement to report itemized score analyses in paragraph (b)(1) of this section does not require the release of test items.

(Authority: 20 U.S.C. 6311(b)(3))

[67 FR 45042, July 5, 2002]

§ 200.11 Participation in NAEP.

- (a) *State participation.* Beginning in the 2002–2003 school year, each State that receives funds under subpart A of this part must participate in biennial State academic assessments of fourth and eighth grade reading and mathematics under the State National Assessment of Educational Progress (NAEP), if the Department pays the costs of administering those assessments.
- (b) *Local participation.* In accordance with section 1112(b)(1)(F) of the Elementary and Secondary Education Act of 1965 (ESEA), and notwithstanding section 411(d)(1) of the National Education Statistics Act of 1994, an LEA that receives funds under subpart A of this part must participate, if selected, in the State-NAEP assessments referred to in paragraph (a) of this section.